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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES:

APPLICATION OF INTERNATIONAL STANDARDS CONCERNING THE HUMAN RIGHTS OF DETAINED JUVENILES

Written statement submitted by the Commission for the Defense of Human Rights in Central America, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[15 July 1997]

1. The Commission for the Defense of Human Rights in Central America (CODEHUCA) wishes to draw attention to the problems of detained juveniles in Central America.

2. Although all the States of Central America have signed and ratified the Convention on the Rights of the Child, the Convention is frequently breached and disregarded.

3. Boys and girls are constantly suffering violations of their rights. There are many places in which abuse occurs, and among the most hazardous are those that should be the most secure: their homes. After the home comes the street, where torturers, exploiters and rapists are lurking, treating street children as a breeding ground for their violence, sadism, prostitution, juvenile delinquency or drug addiction.

4. These violations of the rights and freedoms of juveniles are compounded by the lack of interest or the failure of States to protect children and by measures and policies of various State institutions that directly infringe their rights. This is mainly apparent in the juvenile judicial system, with its corollary of juvenile detention and deprivation of liberty.

5. When juveniles are detained, frequently in an arbitrary fashion, they are tortured, abused, subjected to physical and mental suffering, and their moral integrity is violated. When they are transferred to juvenile detention centres, which are not prisons, they are frequently raped by the wardens, as was the case in the Támara juvenile detention centre in Honduras, where two wardens, Avelino Péres López and Antonio Avila Zelaya, were sentenced to six years' imprisonment for the rape of an 11-year-old girl detainee.

6. Another illustration is the "El Carmen" correctional prison in San Pedro Sula, Honduras, from which 15 juveniles ran away on 20 June 1997 on account of ill-treatment and violence. All but three of the young escapees were recaptured. Two of the three, Sergio Castillo Landín and Marvín Javier Castro Orellana, both of whom were 16, were found dead on the day of their escape, presumably executed extrajudicially. They were found with bullet wounds in the head and other wounds. The last of the three, Miguel Angel Orellana, was also found dead one day later with facial bruising and several wounds on his body. These events were apparently acts of "social cleansing".

7. Unfortunately, Honduras is not the only country where such acts occur. In the light of the information provided by Casa Alianza, an organization which safeguards the human rights of street children and with which CODEHUCA is currently cooperating, there are sound reasons to support the proposal to appoint a special rapporteur to deal with the problem of the human rights of street children. In Guatemala, street children are tortured as a matter of course. Casa Alianza has drawn the attention of the United Nations Committee against Torture to 17 cases of torture of Guatemalan children living "in special circumstances", and has requested a visit to the country, where such offences remain unpunished owing to the corruption and inefficiency of the judicial administration.

8. Staff at the "Las Gaviotas" remand centre for male offenders in Guatemala, which provides comprehensive treatment for juvenile delinquents guilty of offences such as murder, rape, car theft, abduction, drug trafficking and weapons possession, have stated that the juveniles detained there on the orders of the judicial authorities are so dangerous that they have to run the centre like a prison, which makes it difficult to re-educate detainees for reinsertion into society. They add that the premises themselves make it impossible to provide vocational training. There are no specialized security staff, despite the fact that the detained juveniles react with hostility against their loss of freedom and spend their time thinking of how to escape. Although there are only four rooms with accommodation for a maximum of 30 persons, the Centre holds more than 135 detained juveniles aged from 13 to 17. Owing to the shortage of beds and mattresses, the inmates sleep two or three to a bed. All these factors account for the despair felt by the centre's staff at the silence of the Government, which offers no solution to the problems of detained juveniles.

9. Central America's common denominator is thus the general absence of laws and administrative decisions giving legal effect to the norms set forth in the Convention on the Rights of the Child. Many of the rights recognized by the Convention are not reflected in national laws. There is a lack of State programmes and legislation to ensure that the requirements of the Convention are met. For example, the guarantees of due process of law for juveniles are regulated in accordance with criminal law intended for adults, in contravention of many of the rights laid down by the Convention.

10. In actual fact, the prevailing trend in the countries of Central America is towards even severer penalties and punishments, with direct consequences for juvenile offenders, mainly as a result of recently adopted special laws on juvenile delinquency, laws on juvenile offenders and emergency crime laws. In El Salvador, article 22 of the Emergency Crime Law is a blatant violation of article 35 of the country's Constitution and of the Convention on the Rights of the Child, as it lays down extremely harsh penalties in terms of detention sentences for juvenile offenders aged between 14 and 18. In Honduras, the guarantee of due process of law for juveniles is regulated by the Juvenile Jurisdiction Act, which contravenes many of the rights laid down in the Convention. Although international law takes precedence over domestic law, Honduran judges continue to apply the Act. There are only two juvenile courts in Honduras, an indication of the paucity of resources available to provide justice for minors. The situation is such that when there are no juvenile courts, juvenile offenders are brought before the ordinary courts which, as is well known, are not prepared to deal with them.

11. Although serious violations of the rights of juveniles are undoubtedly committed throughout the whole of Central America, the cases of Honduras and Guatemala stand apart from the others. There is no political will to provide genuine, alternative solutions to the situation of juvenile offenders. It is general practice to detain and deprive juveniles of their liberty without any consideration for preventive or educational measures or for reintegration into society. The general attitude is that juvenile offenders are responsible for delinquency within society and must therefore be exterminated.

12. Violations committed against minors are similar to the most cruel violations committed during wartime in Central America, and include extrajudicial executions, torture and enforced disappearance. They are compounded by the social discrimination and marginalization which further favour the extermination of juvenile offenders.

13. In the light of the situations described above, CODEHUCA supports the efforts of Casa Alianza and recognizes its valuable assistance to street children, which has caused it to be repudiated and constantly threatened by the State authorities in both Guatemala and Honduras. CODEHUCA and Casa Alianza therefore urge the Sub-Commission to express its views regarding the need to seek solutions to the constant violations of the rights of street children and juvenile offenders.

14. We also urge the Sub-Commission to be more searching and proactive in the resolutions it recommends for adoption by the Commission on Human Rights, regarding the implementation of the Convention on the Rights of the Child under the domestic law of each and every one of the States parties to the Convention. We also request that it adopt resolutions which include the need to investigate and punish all violations of the human rights of juvenile offenders and street children, with a view to eradicating impunity and enhancing the protection of fundamental rights and freedoms.

15. We reiterate our proposal that a special rapporteur be appointed by the United Nations to address the specific problem of the human rights of street children. For this problem to be addressed at international level, attention should be drawn to the constant violations of the rights of juveniles, and to the policies and analyses required to determine the causes of the situation, on the basis of which the Special Rapporteur may make appropriate observations and recommendations. The functions of the Special Rapporteur should include receiving information or communications relating to violations of the Convention on the Rights of the Child affecting street children. He should in addition respond to emergencies, request information from Governments and carry out field visits.